ally in the minds of the parties at the time of making the contract, which must determine the liabilities of the defendant. It may be said that suicide is not within the fair meaning of the terms, but certainly it is within the literal meaning, and insurance contracts are strictly construed. Much the better reason for the decision, and one well supported by authority, is that the law will not allow a recovery in consequence of act of self-destruction, whether or not the parties intended that there should be such a recovery. The standard authority on this point is *Fauntleroy's Case* (*Amicable Society, etc.* v. *Bolland*, 4 Bligh, N. R. 194, 211), where it was held that the insurer was not liable on the death of the insured by the hands of justice. The reasoning of that case is perfectly applicable to this one, and is simply to the effect that the law will not allow an action to be maintained, because to do so would offer to desperate men a temptation or encouragement to commit suicide or do something to get themselves hanged. The reality of this danger is strikingly illustrated by the facts of the present case.

A still more recent case, on the other hand, while noticing the decision above discussed, comes to an opposite conclusion on the strength of a distinction that would seem to be of doubtful validity. The Pennsylvania Supreme Court, in *Morris* v. *State Mutual Insurance Co.*, 39 Atl. Rep. 52, decided with little discussion that if a life-policy is made payable to a man's wife, instead of his estate, the wife is not prevented from suing for the money by the fact that he killed himself. For this proposition the court quote two New York cases, in both of which the reasoning is extremely brief and unsatisfactory, proceeding apparently on the theory that suicide can prevent recovery only as a breach of an implied condition, which breach not being in this case the act of the plaintiff, the beneficiary, ought not to be a bar to her action. Now if the contract never did, nor could, cover the risk of suicide, no question of conditions is raised, and the identity of the beneficiary makes no difference. Every consideration of public policy would seem to go as strongly against recovery by a wife as against recovery by an executor. A man is at least as likely to kill himself for the benefit of his wife as for the benefit of his creditors.

ASSIGNMENT OR BILL OF EXCHANGE? — Some legal writers maintain with much spirit that the holder of an uncertified check should be allowed to sue the bank upon which the instrument is drawn, if the bank, having sufficient funds of the drawer in its hands, refuse to pay. Various theories are advanced in support of this proposition; perhaps the view most earnestly insisted upon is that the check operates as an equitable assignment *pro tanto* of the fund against which it is drawn. The late cases of *Niblack* v. *Park National Bank*, 48 N. E. Rep. 438 (Ill.), and *House* v. *Kountze*, 43 S. W. Rep. 561 (Tex.), respectively uphold and deny the correctness of this contention.

It is settled law that the relation between a banker and his customer is that of debtor and creditor; and unquestionably the customer may quite as properly assign this claim as any other chose in action which he possesses. But the notion that the assignment may be made by means of a check seems to be founded in a total misconception of the true nature of such an instrument. It is conceived that an uncertified check is in reality nothing but a bill of exchange drawn upon a bank; that it is simply — what it imports on its face to be — an order to pay a certain

sum of money, the obligations of all parties to the instrument, as in the case of an ordinary bill of exchange, being based upon general personal credit. Should an instrument contain words purporting actually to assign the whole or part of a particular fund, it would not be a check at all, but an instrument of an entirely different character. In like manner it would seem that to construe the order contained in a check as an assignment of a particular fund is to deny the very existence of the instrument as a check. In short, it is believed that before certification the only obligation entered into by the bank is with the customer. This contracted obligation is to honor the customer's checks to the amount of his account; and for a breach, the bank, on any sound legal principle, becomes liable to the drawer, and to the drawer only. The holder, however, is clearly not denied an adequate remedy; for until certification the drawer is liable upon his contract to pay the amount of the check in case the banker refuses, and on certification the banker himself enters directly into a contract with the holder.

The question under consideration arises also upon the bankruptcy of the drawer. Were the check-holder really an assignee, he would be allowed, though he had never presented the instrument, to come in as a secured creditor. But, according to the better view, represented by *Dickinson* v. *Coates*, 79 Mo. 250, the check being regarded as a bill of exchange, the holder is compelled to prove with the general creditors. Again, were the check an assignment, it should have priority over a subsequent attachment or garnishment, though not presented until after service of process upon the debtor. The recent case of *McIntyre* v. *Farmers' and Merchants' Bank*, 73 N. W. Rep. 233 (Mich.), however, seems clearly right in regarding this position as untenable.

The assignment theory seems to have been adopted in Scotland and in many of the continental countries, but is not law in England or in most of the American jurisdictions. Its validity is distinctly denied in the Negotiable Instruments Law recently enacted in several of the States.

RECENT CASES.

BILLS AND NOTES — INNOCENT ALTERATION — EQUITY JURISDICTION. — *Held* where the alteration of a promissory note, though made by the holder, is prompted by honest motives, the instrument retains its legal validity, and a bill in equity will lie to recover the amount due thereon. *Wallace* v. *Tice*, 51 Pac. Rep. 733 (Oreg.).

That the holder of a note which has been innocently altered may restore its original condition and sue thereon at law, is well settled in the United States. *Horst* v. *Wagner*, 43 Iowa, 373. This being so, the ground for equity jurisdiction is, as the Oregon court admits, doubtful. But see 2 Daniell, Neg. Inst., § 1411. The reason assigned for entertaining the suit is that the aid of equity was necessary for purposes of discovery. But this is no adequate cause for assuming jurisdiction over a legal right which is amply protected at law. Bispham, Equity, § 565. Otherwise equity would give relief in every case of a legal cause of action. The notion, however, is quite prevalent in America, and especially where, as in this case, the bill is founded on one of the great heads of equity jurisdiction, as mistake, or fraud.

BILLS AND NOTES — UNCERTIFIED CHECK — ASSIGNMENT. — *Held*, that an uncertified check does not constitute an equitable assignment *pro tanto* of the fund against which it is drawn. *McIntyre* v. *Farmers' and Merchants' Bank*, 73 N. W. Rep. 233 (Mich.). See NOTES.